

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY

TRAVIS ELLIS on behalf of	)	
himself and all others similarly	)	CIVIL COMPLAINT
situated	)	
c/o Hilton Parker LLC	)	
10400 Blacklick-Eastern Rd. NW,	)	CASE NO. _____
Suite 110	)	
Pickerington, OH 43147,	)	
	)	
and	)	
	)	
JUSTIN SHANAHAN on behalf	)	
of himself and all others similarly	)	
situated	)	Judge _____
c/o Hilton Parker LLC	)	
10400 Blacklick-Eastern Rd. NW,	)	
Suite 110	)	
Pickerington, OH 43147,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	JURY DEMAND
	)	
SHAMROCK TOWING, INC.	)	
6333 Frost Road	)	
Westerville, Ohio 43082,	)	
	)	
Defendant.	)	

COMPLAINT

Now come TRAVIS ELLIS and JUSTIN SHANAHAN (“Plaintiffs”), individually and on behalf of all others similarly situated, complaining as to the conduct of SHAMROCK TOWING, INC. (“Shamrock”) as follows:

## INTRODUCTION AND NATURE OF ACTION

1. As this Court pointed out the last time Shamrock was hailed into court to answer for its predatory towing policies, “Defendants operate in a heavily regulated industry. They can do nothing without statutory authorization. If Defendants were to start towing cars without statutory authorization, it would no longer be towing, but would instead be car theft.” *McCartney v. Camcar, Inc.*, 2014 Ohio Misc. LEXIS 8987, at \*4 (Ct. Comm. Pls., Franklin Cnty April 9, 2014). Despite that admonition, however, barely a year later Shamrock was systematically towing thousands of vehicles from private lots without such statutory authorization, a practice it maintains to this day.

2. When Shamrock receives permission from a lot owner to tow vehicles from a lot, Shamrock marks the lot with copies of a standard sign that purports to create a “private tow-away zone.” Shamrock employees then patrol between these marked lots and remove vehicles that are not authorized to park in them, towing such vehicles to Shamrock’s own impound lots. Shamrock profits from these arrangements by charging motorists what amounts to a hefty ransom to recover their towed vehicles.

3. While this arrangement is similar to that envisioned by the Ohio legislature in enacting R.C. 4513.60(B) and its successor section, R.C. 4513.601, the standard signs Shamrock uses do not fulfill the requirements added with the enactment of R.C. 4513.601. Under that section, a sign cannot create a “private tow-away zone” unless it includes a “description of persons authorized to park on the property.” R.C. 4513.601(A)(1)(b). Shamrock’s signs, which lack such descriptions, do not effectively create “private tow-away zones” as described therein.

4. Additionally, R.C. 4513.601(B)(3) has, since amendments effective April 6, 2017, provided that “no towing service shall remove a vehicle from a ‘private tow-away zone’ except pursuant to a written contract for the removal of vehicles entered into with the owner of the property.” It appears, however, that Shamrock does not sign binding contracts with property owners. Instead, on information and belief, before beginning to tow from a lot, Shamrock only has the owner sign a “Private Property Impound Authorization Form” that states that it is “NOT a binding contract of any sort.” *Private Property Impound Authorization Form*, Shamrock Towing, Inc. (last visited Aug. 7, 2019), available at <http://shamrocktowinginc.com/wp-content/uploads/2017/09/Private-Property-Impound-Authorization-Form.pdf>.

5. It therefore appears that, at least since the 2015 amendments creating R.C. 4513.601, every Shamrock tow from a purported “private tow-away zone” has been conducted without statutory authorization because Shamrock’s signs fail to create such zones. It further appears that, since 2017, every tow conducted pursuant to Shamrock’s “Private Property Impound Authorization Form” has also been conducted without statutory authorization due to the lack of a written contract with the property owner.

6. Like thousands of other motorists, Plaintiffs Ellis and Shanahan are victims of Shamrock’s systematic vehicle theft. Shamrock charged Plaintiffs, and the members of the putative class they represent, ransoms of over \$100 each to reclaim vehicles that it had unlawfully towed. Plaintiffs seek repayment and/or restitution of these illegal charges, a declaration that Shamrock acted unlawfully, and an injunction to prevent future violations against other motorists, among other relief sought.

### JURISDICTION AND VENUE

7. This Court has jurisdiction over this Civil Rule 23 class action.

8. Venue is proper in this Court because Plaintiffs and Shamrock are domiciliaries of Franklin County, Ohio, and because the torts giving rise to this action occurred in Franklin County, Ohio.

9. Furthermore, removal to federal court would be improper under the Class Action Fairness Act's local controversy exception. 28 U.S.C. § 1332(d)(4)(B). Plaintiffs allege in good faith that greater than two-thirds of the proposed class members are citizens of Ohio, that Defendant Shamrock is a citizen of Ohio, and that the principal injuries giving rise to this action occurred in Ohio.

### PARTIES

10. Plaintiffs Ellis and Shanahan are a natural persons residing in Franklin County, Ohio.

11. Defendant Shamrock is an Ohio corporation with its principal place of business at 6333 Frost Rd., Westerville, Franklin County, Ohio.

### FACTS SUPPORTING CAUSE OF ACTION

12. In the past four years, approximately 66,000 vehicles have been towed from purported "private tow-away-zones" in Columbus, Ohio pursuant to the authority granted by R.C. 4513.601.

13. On information and belief, a significant proportion of those tows, likely approaching half, were performed by Shamrock.

14. On information and belief, these tows represent a significant proportion, again likely approaching half, of Shamrock's business.

15. On information and belief, before Shamrock begins towing vehicles from a purported "private tow-away-zone," Shamrock has the lot owner or the lot owner's representative complete and sign a copy of the "Private Property Impound Authorization Form," attached as Exhibit A.

16. On information and belief, before Shamrock begins towing vehicles from a purported "private tow-away zone," Shamrock does not have the lot owner or the lot owner's representative agree to or sign any other document.

17. On information and belief, Shamrock tows vehicles only from lots marked with one or more of its own signs, or with one or more signs covered by its stickers.

18. On information and belief, Shamrock does not alter these signs and stickers from lot to lot, but rather always provides signs and/or stickers with standardized designs to all new customers.

19. The current standard design, as displayed on Shamrock's website, is attached as Exhibit B.

20. None of Shamrock's standardized sign or sticker designs have provided descriptions of the persons authorized to park on any given private property purportedly designated as a "private tow-away-zone."

21. None of Shamrock's standardized sign or sticker designs have stated the address of, or the name of the business located on, any given private property purportedly designated as a "private tow-away-zone."

22. On information and belief, Shamrock is fully aware of the deficiencies in its signage, but it continues to tow vehicles from lots marked with its deficient signs.

23. On information and belief, a primary motive for Shamrock's failure to comply with the requirements of R.C. 4513.601(A)(1)(d) was to save money, in that customizing signs is expensive and burdensome for Shamrock.

24. On information and belief, a secondary motive for Shamrock's failure to comply with the requirements of R.C. 4513.601(A)(1)(d) was to make money, in that by confusing motorists as to whether or not they were permitted to park in lots monitored by Shamrock, it could increase the number of "unauthorized" vehicles that it could tow.

25. In June of 2017, Plaintiff Shanahan had the current right of possession of a black 2012 Nissan Xterra that he was being permitted to use by a family member.

26. On June 27, 2017, Shamrock towed Plaintiff Shanahan's Xterra, without Plaintiff Shanahan's consent, from a purported "private tow-away-zone" located at 253 E. 19th Ave., Columbus, Ohio 43201.

27. On or about June 27, 2017, Shamrock charged Plaintiff Shanahan approximately \$110 for the return of the vehicle.

28. In June of 2019, Plaintiff Ellis owned a black 2012 Chevrolet Equinox.

29. On or about June 29, 2019, Shamrock towed Plaintiff Ellis's Equinox, without Plaintiff Ellis's consent, from a purported "private tow-away zone" located at 1020 N. High St., Columbus, OH 43215.

30. On or about June 29, 2019, Shamrock charged Plaintiff Ellis \$156.95 for the return of the vehicle.

CAUSE OF ACTION - CONVERSION

31. “‘Conversion’ ‘is the wrongful exercise of dominion over property to the exclusion of the rights of the owner, or withholding it from his possession under a claim inconsistent with his rights.’” *Bugoni v. C&M Towing*, 2012-Ohio-4508, at ¶ 9 (Ohio Ct. App. 10th Dist. 2012) (quoting *Joyce v. Gen. Motors Corp.*, 49 Ohio St. 3d 93, 96 (1990)).

32. “The elements of conversion are: (1) plaintiff’s ownership or right to possession of the property at the time of the conversion, (2) defendant’s conversion, by wrongful act or disposition of plaintiff’s property rights, and (3) damages.” *Lundeen v. Smith-Hoke*, 2015-Ohio-5086, at ¶ 17 (Ohio Ct. App. 10th Dist. 2015) (citing *L & N Partnership v. Lakeside Forest Assn.*, 2009-Ohio-2987, at ¶ 21 (Ohio Ct. App. 10th Dist. 2009)).

33. Here, Plaintiffs allege that they owned, or had the current right of possession of, vehicles that were taken by Shamrock without their consent, and that they suffered damages in the form of a “fee” paid to Shamrock to reclaim their vehicles.

34. Moreover, Plaintiffs allege that Shamrock’s taking of Plaintiffs’ vehicles was wrongful because it was not authorized by the statute permitting the creation of “private tow-away-zones” and the removal of vehicles from such zones.

35. The legislature was emphatic and specific in laying out the steps a property owner must take in order to designate a piece of private property as a “private tow-away zone” from which vehicles may be towed without consent. R.C. 4513.601(A) states, “[t]he owner of a private property may establish a private tow-away zone, but *may do so only if all of the following conditions are satisfied.*” (emphasis added).

36. One of the conditions that must be satisfied to create a “private tow-away-zone” is the placement of a sign, visible from each entrance to the lot, that includes “all of” a detailed list of required pieces of information. R.C. 4513.601(A)(1).

37. The most significant item on that list is item (d), a “description of persons authorized to park on the property.” R.C. 4513.601(A)(1)(d).

38. Presumably because the legislature understood this requirement to be vague, it provided two illustrative examples of language that met the requirement:

- (1) “If the property is a residential property, the owner of the private property may include on the sign a statement that only tenants and guests may park in the private tow-away zone, subject to the terms of the property owner.” *Id.*
- (2) “If the property is a commercial property, the owner of the private property may include on the sign a statement that only customers may park in the private tow-away zone.” *Id.*

39. The legislature also provided a safe harbor provision permitting a lot owner to forego describing the persons authorized to park on her property if she, “include[s] on the sign the address of the property on which the private tow-away zone is located or the name of the business that is located on the property.” *Id.*

40. Shamrock’s standard signs and stickers do not convey, and have never during the relevant period conveyed, a description of the persons authorized to park in any given “private tow-away-zone” they purport or purported to create.

41. Shamrock’s standard signs and stickers do not convey, and have never during the relevant time period conveyed, the address of, or the name of the business located on, any given “private tow-away-zone” they purport or purported to create.



42. Shamrock has therefore towed thousands of vehicles, including Plaintiffs', from purported "private tow-away-zones" that were, in fact, nothing of the sort.

43. R.C. 4513.601(B)(3) further specifies that "no towing service shall remove a vehicle from a 'private tow-away zone' except pursuant to a written contract for the removal of vehicles entered into with the owner of the property."

44. On information and belief, Shamrock does not form written contracts with the owners of lots from which it performs purportedly R.C. 4513.601-based tows.

45. Shamrock has therefore towed thousands of vehicles, belonging to Plaintiffs and other putative class members, without statutory authorization of any kind and without the consent of Plaintiffs and the other putative class members.

46. Nevertheless, Shamrock required motorists whose vehicles it towed without authorization to pay a fee of upwards of \$100 in order to reclaim their vehicles.

47. Plaintiffs and all putative class members are therefore entitled to repayment and/or restitution of the "fees" paid to Shamrock to retrieve their vehicles.

48. Punitive damages are available for conversion claims where the conversion involves elements of fraud, malice, or insult. *Parrish v. Machlan*, 131 Ohio App. 3d 291, 297-98 (Ohio Ct. App. 1st Dist. 1997).

49. Here, Plaintiffs allege that Shamrock knowingly and willfully towed their cars and thousands of other cars without statutory authorization, and then falsely represented to its victims that it was entitled to a fee, to which it knew it had no right, before it would return their vehicles.

50. Plaintiffs and the putative class are therefore entitled to punitive damages.

CLASS ALLEGATIONS

51. Plaintiffs brings this claim on behalf of a class, pursuant to Civil Rule 23(A), (B)(1), (B)(2), (B)(3), and (C)(4).

52. The class consists of (a) all individuals who owned or had the current right to possess a vehicle, (b) which vehicle Shamrock towed from a purported “private tow-away-zone,” (c) where that tow took place without the individual’s stated or written consent and without an order under R.C. 4513.60, 4513.61, 4513.63 or 4513.66, (d) where that tow took place on or after September 23, 2015, and (e) where Shamrock charged that individual or an agent of that individual a monetary fee before releasing the vehicle.

53. Specifically excluded from the class are the following: (1) Shamrock, any entity in which it has a controlling interest, and the officers, directors, employees, affiliates, legal representatives, heirs, successors, subsidiaries, and/or assigns of any such individual or entity; (2) any judge or judicial officer with responsibility over the management or resolution of this litigation and members of any such individual’s immediate family; (3) counsel for Plaintiffs and Shamrock, their employees, and the members of those individuals’ immediate families.

54. The class is so numerous that joinder of all members is not practicable. On information and belief, there are thousands of class members.

55. There are questions of law and fact common to the class members that predominate over any questions relating to individual class members. Among such questions of law and fact are the following:

- (A) Whether Shamrock's standardized sign and sticker designs fail to create a "private tow-away-zone" under R.C. 4513.601;
- (B) Whether Shamrock's "Private Property Impound Authorization Form" fails to satisfy the requirements of 4513.601(B)(3);
- (C) Whether Shamrock had a policy or practice of towing vehicles from purported "private tow-away-zones" created by its own standardized signs;
- (D) Whether Shamrock had a policy or practice of towing vehicles from purported "private tow-away-zones" whose owners had formed no written contract other than the avowedly non-contractual "Private Property Impound Authorization Form"; and
- (E) Whether Shamrock had a policy or practice of charging a fee to recover vehicles towed from purported "private tow-away-zones."

56. Plaintiffs' claims are typical of the claims of all class members. All are based on the same factual and legal theories.

57. Plaintiffs will fairly and adequately represent the class members. Plaintiffs have retained competent counsel familiar with consumer protection and class action litigation and with the resources to pay for class notice and discovery costs.

58. A class action is superior for the fair and efficient adjudication of this matter, in that individual actions are not economically feasible and many if not most class members are unaware of their rights.

WHEREFORE, Plaintiffs and the putative class respectfully request that this Honorable Court enter judgment as follows:

- a. Certifying this case as a class action under Civ.R 23(A), (B)(1), (B)(2), and/or (B)(3);
- b. Appointing Plaintiffs' counsel as class counsel;
- c. Declaring that the practices complained of herein are unlawful and violate the aforementioned bodies of law;
- d. Awarding Plaintiffs and class members compensatory damages, punitive damages, attorneys' fees, and all litigation costs, in an amount exceeding twenty-five thousand dollars;
- e. Awarding Plaintiffs and class members pre-judgment interest and post-judgment interest to the extent provided for by law;
- f. Entering an injunction prohibiting Shamrock from continuing to tow vehicles from "private tow-away-zones" marked with deficient signs;
- g. Awarding any other relief as this Honorable Court deems just and appropriate.

**A TRIAL BY JURY IS DEMANDED.**

Dated: August 7, 2019

By: s/ Geoffrey Parker

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